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No. 81-2196

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS AND NEW YORK SHIPPING ASSOCIATION, INC.,

Petitioners,

v.

FEDERAL MARITIME COMMISSION, UNITED STATES OF AMERICA, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC., NEW YORK FOREIGN FREIGHT FORWARDERS AND BROKERS ASSOCIATION, CONSOLIDATED FORWARDERS INTERMODAL CORPORATION, AMERICAN IMPORTERS ASSOCIATION AND INTERNATIONAL ASSOCIATION OF NVOCCS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Petitioners, pursuant to Rule 22.5 of the Rules of this Court, submit this reply brief in support of their petition for a writ of certiorari.

The brief in opposition filed by the federal respondents (hereinafter "FRB")[1] does not dispute petitioners' show-

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[1] The briefs in opposition filed by the private respondents are devoted principally to the merits and not to the propriety of review by this Court. Those portions of their briefs which do address the question of certiorari merely repeat arguments raised by the federal respondents.

ing that this case presents substantial questions of federal law of national scope and importance. The main thrust of this opposing brief is a claim of prematurity.[2] This claim is no longer tenable. It has been vitiated by a subsequent order of the court of appeals in this case.[3]

The court of appeals does not share the federal respondents' view that this Court's consideration of the jurisdictional questions presented for review would be premature. On the contrary, the court of appeals has recognized that determination of the substantive issues should await final disposition of the jurisdictional questions. On July 2, 1982, the court of appeals vacated the Federal Maritime Commission's decision on remand, which reaffirmed the Commission's original determination on the merits, and directed the Commission to "defer further action . . . until the Supreme Court has concluded its action in this case." Appendix at 2a. Thus, the federal respondents' contention that "the proceedings on remand have concluded and the case is now pending in the court of appeals for decision on the merits" (FRB at 8) is simply untrue. In light of its latest order, it would seem that the court of appeals agrees that the important jurisdictional questions presented here are ripe for determination by this Court.

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[2] The alternative ground of opposition rests upon an attempt to skirt the intercircuit conflicts by compartmentalizing the statutory schemes addressed in the divergent decisions (FRB at 9-11). Respondents, however, fail to come to grips with the fact that the judicial disagreement relates to a test common to all. In any event, the lengths to which respondents must go to tease apart the overlapping congressional regimes only serves to highlight the need for resolution by this Court of the important and complex questions presented.

[3] A copy of this order is reproduced in the appendix which is attached hereto.

Conclusion

For the foregoing reasons and those set forth in the petition, a writ of certiorari should issue.

Dated: New York, New York
July 23, 1982

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Supplemental Opinion Following Remand

By Direction of the Sitting Division of the Court this *Per Curiam* will not be printed or published in U.S. App. D.C. or F.2d

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1776

COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS and NEW YORK SHIPPING ASSOCIATION, INC.,

Petitioners,

v.

FEDERAL MARITIME COMMISSION and UNITED STATES OF AMERICA,

Respondents,

NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC., *et al.*, INTERNATIONAL ASSOCIATION OF NVOCCS, and AMERICAN IMPORTERS ASSOCIATION, INC.,

Intervenors.

Supplemental Opinion Following Remand

Filed July 2, 1982

Before WRIGHT, MACKINNON, and WALD, *Circuit Judges.*

Opinon for the Court *per curiam.*

PER CURIAM: On March 2, 1982 this court held that the Federal Maritime Commission had jurisdiction under the federal shipping laws to consider the legality of tariff

provisions adopted by the Puerto Rico Maritime Shipping Authority which implemented the collectively-bargained Rules on Containers. We also remanded the record to the Commission for reconsideration of its decision that the Rules on Containers violated various provisions of the shipping laws. A petition for certiorari was filed with the Supreme Court on May 29, 1982 (No. 81-2196). On May 27, 1982 the Commission filed a Report and Order on Remand, reaffirming its previous determination on the merits and ordering discontinuation of the proceedings under review in this case, FMC Dockets Nos. 73-17 and 74-40.

It appears that the Commission is now engaged in a "broad scale proceeding examining the lawfulness of practices of numerous carriers including PRMSA arising out of the '50-mile rules' contained in the present (1980) collective bargaining agreements." Report and Order on Remand at 13 (describing FMC Docket No. 81-11). The Commission has referred that proceeding to an Administrative Law Judge for detailed fact-finding based on a full evidentiary record.

Because the information developed in that investigation may shed further light on the shipping law issues involved in Commission Dockets Nos. 73-17 and 74-40, and because action by the Supreme Court might affect the Commission's jurisdiction over these cases, we vacate the Commission's order that these proceedings be discontinued. The Commission should defer further action in its Dockets Nos. 73-17 and 74-40 until it has reached its final decision in its Docket No. 81-11 and until the Supreme Court has concluded its action in this case. The Commission should then reconsider its conclusions in Dockets Nos. 73-17 and 74-40.

So ordered.